IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.800 OF 1989

The State of Maharashtra ...Appellant.

V/s

1. Shri Vinayak Eknath Shinde,
age 50 years, Occ. Agriculturist.

2. Shri Balu Vinayak Shinde,
age 29 years, Occ: Agriculturist

3. Shri Chandrakant Vinayak
Shinde, age 25 years, Occ:
Agriculturist.

All resided at Pingori,
Tal: Purandhar, District - Pune ...Respondents
(Orig. Accused)

Mr. A.M. Shringarpure for the appellant

None for the respondents.

CORAM: V.M.KANADE,J.

DATE: 24th September, 2004.

ORAL JUDGMENT:

1. Heard the learned APP for the State.

2. None appears for the respondents.

3. Appellant - State is challenging the order passed by the Judicial Magistrate, First Class, Saswad, Pune. Respondents - accused were charged under sections 325, 324, 323, 341, 504, 506 read with section 34 of the Indian Penal Code.

4. Prosecution's case is that on 6/9/1983 at about 6.30 p.m. when the injured - Arjun Shinde was going on bicycle, somebody hit him on the back of his head with an axe and when he turned back he saw Vinayak Shinde who gave two to three blows of axe on his head. He was also assaulted by son of Vinayak with iron bar and by Chandrakant with stick on the legs and hands. A complaint was lodged by the wife of the injured Arjun Shinde, who came there after the assault was over.

5. I have perused the evidence of Arjun Shinde. In the said evidence, though in the Examination-in-chief, he has stated that he has seen accused No.1 assaulting him with an axe and accused Nos. 2 and 3 assaulting him on his legs and hands, in the cross-examination, he has admitted that he received the first blow on the back of his head and then he fell down and he received rest of the blows on his back and neck. He has further admitted that there was enmity between him and the accused and that the Chapter Case was filed by accused No.1 against him. Similarly, other cases were also pending between him and the accused No.1. He has further admitted that several complaints were also filed against him by the other villagers. The Trial

Court, therefore, has observed in para 7 that the only question which was to be considered was whether the only evidence of injured Arjun Shinde was sufficient to hold the accused guilty. The Trial Court has observed that in the admissions given by the injured Arjun Shinde he has stated that Chapter Cases were pending and filed against him at the instance of accused No.1 and that there was a dispute regarding 9 gunthas of land between him and the accused No.1. The Trial court has observed that though there were number of houses adjacent to their house, no other person has deposed to support or corroborate the statement of the injured Arjun Shinde. The Trial Court has further observed that the doctor who examined the injured has not given the evidence. However, prosecution examined Dr. Jaybhay who had examined Arjun Shinde at 9.00 P.M. However, the prosecution did not examine the Medical Officer of Sasoon Hospital, Pune who issued the certificate to the injured. Similarly, Dr. Jaybhay who produced the Medical Certificate stated that it was neither signed by the injured nor his thumb impression was taken on the said medical certificate. The Trial Court, therefore, came to the conclusion that the Medical Certificate Exhibit-30 is not admissible in evidence. The Trial Court, therefore, observed that the injuries were not proved

by the prosecution.

6. I have gone through the evidence of the prosecution witnesses. The finding given by the Trial Court, in my view, are based on cogent reasons which have been given in support of the said finding which is also borne out from the record. There is no reason to interfere with the said order. Appeal is dismissed.

V.M. KANADE, J.